IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 19847 of 2007(K)

OS.463/2006 of PRINCIPAL MUNSIFF,ALAPPUZHA

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PETITIONER:

K.A.MUHAMMED KUNJU, AGED 51 YEARS,
S/O.LATE N.M.ABDUL SALAM,NARANJI HOUSE,
C.C.S.B.-ROAD, CIVIL STATION WARD, ALAPPUZHA.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS:

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1. ALAPPUZHA MUNCIPALITY, REP.BY ITS
SECRETARY,MUNICIPAL OFFICE ALAPPUZHA.

2. HABEEB BULLAH, AGED ABOUT 52 YEARS,
REGINA MANSIL, ALISSERY WARD,
ALAPPUZHA.

R2 BY ADV SHRI. P.P.JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: THE TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST RESPONDENTS

EXT.P2: -DO- OF THE REPORT OF THE ADVOCATE COMMISSIONER WITH REPORT OF THE EXPERT ENGINEER

EXT.P3: -DO- OF THE OBJECTION SUBMITTED BY THE PETITIONER

EXT.P4: -DO- OF THE ORDER IN I.A.1738/07

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 19847 OF 2007 K

Dated this the 9th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P4 order passed by the learned Munsiff in I.A.1738/07 in O.S.463/06. The said application was filed by the second defendant to appoint an Advocate Commissioner for supervision of the construction of the retaining wall as a protection to the property and building of the plaintiff. The court considered the matter and directed the commissioner and an expert who submitted an earlier report to carry out the work. It is aggrieved by that decision the plaintiff has come up with this writ petition. The parties have taken me through the previous commissioner's report and the report of the expert. There is level difference between the property on account of the construction done by the defendants and according to the plaintiff it has resulted in loss of lateral support to the plaintiff's property and cracks have started in the building. A commissioner has been appointed this case, was assisted by an expert engineer, an Assistant Engineer in service of the P.W.D. He had suggested that a protection wall around the boundary of the building under construction is to be carried out urgently and further suggested that

it shall be done preferably only during summer. Now the apprehension raised by the counsel for the plaintiff is that the soil is of a loose nature and further digging for the purpose of constructing a retaining wall may result in more danger than preventive action and therefore requests that the said construction may be done only during summer holidays as suggested by the commissioner. On the other hand, learned counsel for the respondent would submit that the building is constructed half way and the digging work is also over and therefore only the construction of the retaining wall is to be carried out and therefore there is nothing to interfere with the order of the learned Munsiff. The expert had opined that the construction of the retaining wall has to be done during summer. There must be scientific reasons for that. But now, we are in the midst of a very strong monsoon season and the feasibility of constructing a retaining wall in this season has to be meticulously looked into and it should not be rather a nuisance to the party. Therefore, before starting to construct a retaining wall I direct the commissioner along with the expert engineer to inspect the property and find out whether it is feasible and advisable to have a retaining wall constructed at this stage immediately or whether such a construction at this stage would have

reverse effect. After obtaining the report from the commissioner and the expert the court may consider the question of constructing retaining wall after hearing both sides. Both sides are at liberty to supply scientific materials for a proper decision of the case regarding the construction of a supporting wall. To this extent the order of the learned Munsiff is modified and directions be given by the Munsiff for an immediate joint inspection by the commissioner and the expert. Regarding other constructions the court may pass appropriate orders. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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